

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Annual Assessment of the Status of)	MB Docket No. 03-172
Competition in the Market for the)	
Delivery of Video Programming)	

REPLY COMMENTS OF RCN CORPORATION

Pursuant to the Notice of Inquiry (“NOI”) released by the Commission in the above-captioned matter on July 30, 2003,¹ RCN Corporation (“RCN”), by the undersigned counsel, hereby submits its Reply Comments in this proceeding. In these comments, RCN rebuts Comcast’s claim that competition in the multi-channel video programming (“MVPD”) market is “intense” and “thriving.” While RCN believes that competition in the MVPD market has improved in the past decade, the anti-competitive efforts of the incumbent cable operators, including Comcast, continue to stifle competition and thwart its full potential. RCN provides herein an additional example of such anti-competitive behavior related specifically to the denial of essential sports programming. As explained below, Comcast advocates consumer choice in programming, but only for its own subscribers, not its competitor’s subscribers.

¹ In the Matter of Annual Assessment of the Status of Competition in the Market for Delivery of Video Programming, *Notice of Inquiry*, MB Dkt. No. 03-172, FCC 03-185, rel. July 30, 2003.

I. EXCLUSIVE ARRANGEMENTS FOR ESSENTIAL SPORTS PROGRAMMING ARE ANTI-COMPETITIVE

In its comments, Comcast uses adjectives such as “intense” and “aggressive” to describe the status of competition in the multi-channel video programming market today.² RCN believes, however, that these adjectives are more appropriately applied to Comcast’s continued efforts to engage in anti-competitive behavior in its service areas, which is aimed at stifling competition, rather than promoting it. Contrary to Comcast’s rosy picture of “thriving” competition in the MVPD market, the true market reality is that Comcast still is the dominant provider of cable services in the industry with over 21 million customers, and continues to use its market power to engage in anti-competitive behavior.

A good example of such behavior is in the Boston market, where Comcast has entered into an exclusive arrangement with the New England Sports Network (“NESN”) to provide sports programming broadcasts in high definition format to Comcast’s subscribers. Specifically, Comcast is offering its customers broadcasts of the Boston Red Sox home games using high definition television (“HDTV”) technology. NESN is owned by the Boston Red Sox and the Boston Bruins, and Comcast plans to deliver exclusive NESN HDTV coverage of the Bruins home games, as well. NESN has not provided this HDTV programming to RCN because of NESN’s exclusive arrangement with Comcast. As a result, RCN is not able to provide to its consumers, or offer to potential subscribers, this critical HDTV programming. Moreover, Comcast is exploiting this exclusive arrangement in the battle to win customers by heavily advertising that it has an exclusive on this programming.

² Comments of Comcast Corporation in MB Docket No. 03-172, dated Sept. 11, 2003, at 3 & 39.

As RCN emphasized in its initial comments in this proceeding, the FCC has acknowledged the importance of certain “must have” programming, especially local and regional sports programming, to the success of competitive MVPDs. As stated by the FCC, “(a)n MVPD’s ability to provide service that is competitive with an incumbent cable operator is significantly harmed if denied access to ‘must have’ vertically integrated programming for which there are no good substitutes.”³ Moreover, the FCC has found that even lack of access to only some of this “must have” programming can jeopardize a competitive MVPD’s ability to retain subscribers.⁴

Without a doubt, the Red Sox and Bruins programming is important to cable subscribers in the New England market, especially in this historic year when the Red Sox are in the playoffs. And, as explained below, the exciting new technologies and services, such as the provision of such “must have” programming in HDTV format, is beneficial to consumers and is in the public interest. Such programming should not, however, be limited only to the subscribers of the incumbent cable operator. To compete effectively, RCN and other competitors must be able to provide their subscribers, and potential subscribers, with the essential programming, and especially sports programming, that they demand.

³ Implementation of the Cable Television Consumer Protection and Competition Act of 1992, Development of Competition and Diversity in Video Programming Distribution: Section 628(c)(5) of the Communications Act, Sunset of Exclusive Contract Prohibition, *Report and Order*, 17 FCC Rcd 12124, para. 4 (2002).

⁴ *Id.* para. 33.

II. AN MVPD COMPETITOR'S ABILITY TO PROVIDE ESSENTIAL HDTV PROGRAMMING IS CRITICAL TO COMPETITION IN THE MVPD MARKET.

For nearly two decades, the FCC has been striving to introduce advanced television services, recognizing the "profound benefits" it can bring consumers.⁵ In 1987, the FCC initiated a proceeding to address the implementation of HDTV, which eventually evolved into a proceeding to address digital broadcast television services ("DTV").⁶ The FCC has recognized the exciting potential of digital television services and the benefits to consumers:

Digital television allows for the delivery of a signal virtually free of interference. DTV broadcasters will be able to offer television with movie-quality pictures and Dolby digital surround sound, along with a variety of other enhancements. . . . DTV is a more flexible and efficient technology than the current analog system. In the same bandwidth in which a broadcaster provides one analog programming channel, a broadcaster may provide a super sharp "high definition" (HDTV) program or multiple "standard definition" DTV programs simultaneously. . . . A broadcaster can also use DTV to provide interactivity and data services that were not possible with analog technology. Converting to DTV will also free up parts of the scarce and valuable broadcast airwaves, allowing those portions of the airwaves to be used for other important services, such as advanced wireless and public safety services (police, fire departments, rescue squads, etc.).⁷

For these reasons, the FCC has worked hard to implement digital television services in a timely manner so as to bring the benefits of this exciting new technology to consumers. On this point, the FCC has recognized the critical role that cable operators play in "influencing the pace of the digital transition."⁸ Chairman Powell also has called for "more cable carriage of DTV

⁵ In the Matter of Advanced Television Systems and their Impact on the Existing Television Broadcast Service, *Fourth Notice of Proposed Rulemaking and Third Notice of Inquiry*, 10 FCC Rcd 10541, para. 5 (1995).

⁶ HDTV is a form of digital television.

⁷ FCC, Digital Television Fact Sheet, <http://www.fcc.gov/cgb/consumerfacts/digitaltv.html>

⁸ *Second Periodic Review of DTV, NPRM* at para. 14.

channels.”⁹ Comcast itself recognizes the importance of HDTV and sports programming, and the significant competitive role they play in the MVPD market.¹⁰ The “must have” nature of local and regional sports programming, together with the important public policy goals of the HDTV service and the benefits it brings to consumers, demonstrate the significance of this programming and its impact on a competitor’s ability to provide such programming to its subscribers and effectively compete in the MVPD market. Clearly, the actions of NESN and Comcast in this case are anti-competitive and contrary to the public interest. It is essential that the FCC ensure that dominant providers are not permitted to engage in exclusive or discriminatory access to these essential services and programming.

III. CONCLUSION

In its comments, Comcast discusses in detail the benefits it has brought to its customers as a result of the “intense” competition in the MVPD market. RCN agrees that competition is beneficial to consumers and believes that RCN and other competitive broadband service providers have been instrumental in providing the competitive pressure necessary to compel Comcast and other incumbent cable operators to improve customer service, increase programming choices, and introduce innovative programming and advanced services to consumers. The FCC should not analyze the status of competition in the MVPD market, however, through Comcast’s rose-colored glasses. As demonstrated herein and by other comments filed in this proceeding, anti-competitive behavior on the part of the incumbent cable operators is alive and well. The FCC must

⁹ *Id.* para. 15.

¹⁰ Comcast Comments at 25-28.

take a pro-active stance to eliminate such behavior if it seeks to achieve the full potential
that a truly competitive MVPD market can offer.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, L. Elise Dieterich, hereby certify that on this 26th day of September, 2003, the foregoing Reply Comments of RCN Corporation were filed electronically via the Internet to <http://www.fcc.gov/e-file/ecfs.html>, and a copy served via e-mail on the following:

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